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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,230	05/17/2007	Goetz Braeuchle	10191/4553	9837

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KENYON & KENYON LLP  
ONE BROADWAY  
NEW YORK, NY 10004

EXAMINER
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VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

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06/28/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/584,230	<b>Applicant(s)</b> BRAEUCHLE ET AL.	
	<b>Examiner</b> Frank B. Vanaman	<b>Art Unit</b> 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10, 12 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 12, 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Status of Application***

1. Applicant's amendment, filed April 16, 2010, has been entered in the application. Claims 10, 12 and 14-23 are pending, with claims 19-23 being newly added.

***Claim Objections***

2. Claim 12, previously pending, and claims 19-23, newly added, are objected to because of the following informalities: these claims depend directly (e.g., claims 12 and 19) or indirectly (claims 20-23) from a canceled claim (note that claim 19 has been explicitly drafted to depend from claim 11, while the same amendment cancels claim 11). No claim now presents the limitation of previous claim 11, and as such the desired dependency would be somewhat difficult to assume. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 10, 12, 14 and 19 (assumed dependent on claim 10) are rejected under 35 U.S.C. 102(b) as being anticipated by Steinle et al (EP 1 304 251, cited by applicant). Steinle et al. teach an arrangement for a vehicle with a cruise control system and a "stop and go" system (paragraphs 0006 and 0008) which can function to keep the vehicle in a stopped condition (paragraphs 0009, 0010, 0011) and resume a following condition, wherein the vehicle may be placed in a waiting state (e.g. stopped) at such time as a forward vehicle is stopped and the host vehicle brake pedal is operated, the reference acknowledging that commonly it is known to use an operation of the brake pedal to perform a shutoff control (paragraph 0010), however that this function may serve to introduce an unsafe vehicle operation condition (see paragraph 0011) and should be avoided for safety reasons, and as such, proposes to use one of plural other conditions such as a velocity being below a minimum speed (such as 10 km/h, paragraph 0012) and or the operation of a control for longer than the passing of a specified time (see paragraph 0012), such that the meeting of one or more of these predetermined conditions can control the application of the allowing or prevention of shutoff of the cruise and "stop and go" systems, wherein the cruise control thus remains in an active or activated state even when the brake control is operated.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Gilling (US 5,771,481). The reference to Steinle et al. is discussed above and fails to teach that the start of the vehicle from the wait state is only allowed upon confirmation from the driver. Gilling teaches that it is well known to prevent resuming of a moving state of a vehicle (while the cruise control still remains enabled) after stopping (step 48) until a driver explicitly confirms resumption of a cruise condition (54, 56). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the vehicle operation arrangement taught by Steinle et al. with an explicit confirmation step before resumption of a running control is allowed, as taught by Gilling et al. for enhancement of safety, for example to prevent the vehicle from automatically starting to run at an undesired time.
7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Satonaka et al. (US 5,749,427). The reference to Steinle et al. as discussed above, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for longer than a minimum period as making the shutoff operational. Satonaka et al. teach that it is well known to use the time of engagement of a brake pedal (See figure 9, steps 40 and 32, also note col. 11, lines 7-16) to control the disengagement of a function (e.g., step 32). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Satonaka teach that a shutoff may be initiated by the engagement of a brake for longer than a predetermined time, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as operable by holding a brake condition for longer than a predetermined time, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of

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the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Simonyi et al. (US 4,867,288). The reference to Steinle et al. as discussed above, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for multiple times as making the shutoff operational. Simonyi et al. teach that it is well known to use a number of plural engagements of a brake pedal (See col. 7, lines 25-38) to control an operation of a function (e.g., placing an operative value into a memory location). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Simonyi et al. teach that a function may be engaged by the engagement of a brake for a number of times, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as operable by operating a brake condition for a number of times, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Hirasago (US 6,332,108). The reference to Steinle et al. as discussed above, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for a specific intensity or depression gradient as making the shutoff operational. Hirasago teaches that it is well known to use a measured further degree of depression of a brake pedal (See figure 5, step 25) to control the selection of a function (e.g., step 22). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Hirasago teach that a functional control may be initiated by the

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engagement of a brake for to a further degree of depression, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as operable by engaging a brake condition to a further depth of depression, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Gilling as applied to claim 20 above, and further in view of Satonaka et al. (US 5,749,427). The reference to Steinle et al. as modified by Gilling, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for longer than a minimum period as making the shutoff operational. Satonaka et al. teach that it is well known to use the time of engagement of a brake pedal (See figure 9, steps 40 and 32, also note col. 11, lines 7-16) to control the disengagement of a function (e.g., step 32). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Satonaka teach that a shutoff may be initiated by the engagement of a brake for longer than a predetermined time, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as modified by Gilling as operable by holding a brake condition for longer than a predetermined time, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Gilling as applied to claim 20, and further in view of Simonyi et al. (US

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4,867,288). The reference to Steinle et al. as modified by Gilling as discussed above, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for multiple times as making the shutoff operational. Simonyi et al. teach that it is well known to use a number of plural engagements of a brake pedal (See col. 7, lines 25-38) to control an operation of a function (e.g., placing an operative value into a memory location). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Simonyi et al. teach that a function may be engaged by the engagement of a brake for a number of times, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as modified by Gilling as operable by operating a brake condition for a number of times, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

12. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Gilling as applied to claim 20, and further in view of Hirasago (US 6,332,108). The reference to Steinle et al. as modified by Gilling as discussed above, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for a specific intensity or depression gradient as making the shutoff operational. Hirasago teaches that it is well known to use a measured further degree of depression of a brake pedal (See figure 5, step 25) to control the selection of a function (e.g., step 22). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Hirasago teach that a functional control may be initiated by the engagement of a brake for to a further degree of depression, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as modified by

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Gilling as operable by engaging a brake condition to a further depth of depression, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

### ***Response to Comments***

13. Applicant's comments, filed with the amendment, have been carefully considered. Initially, as regards the application of the reference to Steinle et al., applicant refers to some aspect of inherency, however applicant does not identify any particular feature of Steinle et al. which is deemed inherent.

Applicant asserts that the speed threshold feature which applicant has added to claim 10 (previously present in claim 13, which is now canceled) is not taught by Steinle et al. The examiner disagrees. Note paragraph 0012 of Steinle et al. - in referring to conditions which may be used to allow a shut-down: "a system shutdown from the conditions can become made if the accelerator ... operated becomes until a certain minimum speed (e.g., 10 Km/h) achieved becomes...", which appears to anticipate this limitation in that the shutoff condition appears to be valid until the speed reaches a threshold, in which case it is valid for speeds below that threshold, corresponding to applicant's claimed occurrence of the velocity as having a value between 0 and 10 km/h.

As regards the combination rejections, applicant refers to a taking of official notice, however no official notice appears to have been taken in the office action. Applicant has failed to assert that any specific feature or aspect has been identified as being old and well known under official notice.

### ***Conclusion***

14. Applicant's amendment necessitated the new and/or modified ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**

/Frank B Vanaman/  
Primary Examiner, Art Unit 3618